

STATEMENT OF COMMISSIONER ROBERT S. ADLER REGARDING THE COMPLIANCE DATE OF THE FINAL STANDARDS FOR FULL SIZE AND NON-FULL-SIZE CRIBS UNDER SECTION 104 OF THE CPSIA

DECEMBER 15, 2010

The passage of the Consumer Product Safety Improvement Act (CPSIA) in 2008 required a number of important voluntary safety standards for durable infant or toddler products to be updated and made mandatory by the Consumer Product Safety Commission. This was a long overdue and necessary step for the safety of our most involuntary risk-takers: babies. Accordingly, I am honored to be at the Commission at this moment so that I may support the passage of new performance standards for full-size and non-full size cribs. The professional staff has gone significantly above and beyond the call of duty to bring this rule to finality by the end of 2010, and one and all should be commended for their tireless efforts. This new standard provides significant safety upgrades both with respect to the way cribs are manufactured and the way they are tested. This is exactly the type of work the Commission was created to undertake. Unfortunately, I disagree with my colleagues with respect to their extending to two years the compliance date for child care facilities and public accommodations. However, let me be clear: my disagreement in no way changes my strong support for the substantive provisions of the standards that are before us today.

I have been involved in consumer issues for almost forty years. In this time, I have come to believe strongly in something that is known as the "precautionary principle." Put simply, the precautionary principle leads me, as a policy maker, always to err on the side of consumers if the data do not clearly point to one course of action.

Yet another foundational belief of mine is that the Consumer Product Safety Commission makes decisions based on data. That was the case when the agency was founded, and I believe it must remain the case today.

Accordingly, although I recognize the good faith and sincerity of my fellow Commissioners in casting their vote to extend the compliance date for child care facilities and public accommodations, I cannot support it. Their vote means that these facilities will not be required to meet this critical safety standard for a full two years from the date this rule will be published – which will be almost five years after the passage of CPSIA. It's not that I know that two years is the *wrong* date for this rule to take effect – it's that I have no evidence that it is the *right* date. Reasonable minds can disagree on how the

same data can be interpreted, but in this instance I do not see <u>any</u> data that supports adding 12 extra months to the professional staff's recommendation of a one-year compliance date.

After a herculean effort by our staff, including engineers, economists, psychologists, and attorneys who have covered the crib industry on a daily basis for years, their recommendation was for a six month compliance date for manufacturers, retailers, and other crib providers, but a twelve month compliance date for child care facilities. The majority has chosen, without justification, to extend this date to a two year compliance date for child care facilities and other entities. Oddly, there is no request in the record for a two year delay in the compliance date for this rule. The majority of commenters suggested that a one year date would be sufficient for child care facilities to comply with the rule, while two commenters suggested five years but provided little hard data in support of this comment, and one commenter suggested no postponement of any kind.

I concede that twelve months is not a magic number and may not offer enough time for the marketplace to adjust, and we may yet discover that two years is exactly right. But, I see nothing in the record to justify it. This date is too important to be selected haphazardly. I believe that a far better approach would be to accept the staff's recommendation and then ask for more information from the marketplace once the six month effective date for manufacturers and retailers goes into effect. That way we could have hard data that helps the agency understand what is happening in the real world in real time – not just theoretically.

I recognize that we are in uncharted waters. The Commission has never before entered into a rulemaking, whether or not required by Congress, that not only has retroactive applicability, but also requires the replacement of every product in a given product class – particularly in an occupational setting like child care facilities. This rule, whatever its compliance date, will require child care facilities to accelerate replacement of their crib inventory possibly ten times faster than they would normally. In addition, these facilities must wait until new inventory is available in the marketplace, and then compete with consumers and child care providers for those new cribs. In short, I am extremely sympathetic to their situation.

Yet it is for this very reason that I believe we must get the compliance date correct. If the date is too soon, we risk child care facilities unsuccessfully struggling to meet the cost of compliance. On the other hand, if we choose a date that is too far in the future, we risk having thousands of children in unnecessarily unsafe, non-compliant cribs. To me, the wiser course is to acquire data that helps the Commission make a rational and objective decision.

No matter the compliance date, it is incumbent upon us to be sure that <u>all</u> child care providers, public accommodations, parents, and others that use or provide cribs are aware of this rule, what it means, and the need for safe cribs to be available to all children. I continue to urge the Commission to engage in a robust and comprehensive education and information campaign through traditional and non-traditional media that alerts the public,

the child care industry, state and local licensing agencies, and all other concerned stakeholders that the rules have changed and all cribs must be compliant with the new federal safety standard.